

Justice Reinvestment in North Dakota

*Fourth Presentation to the Incarceration Issues Committee:
Policy Recommendations*

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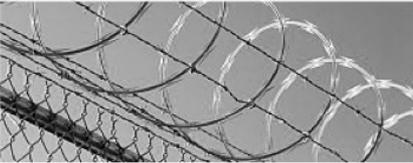
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The Council of State Governments Justice Center

Corrections



Justice Reinvestment



Mental Health



Reentry



Substance Abuse



Youth



Courts



Law Enforcement



National nonprofit, nonpartisan membership association of state government officials that engages members of **all three branches** of state government.



The Justice Center provides **practical, nonpartisan advice** informed by the best available evidence.

What is Justice Reinvestment?



JUSTICE REINVESTMENT

A data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease recidivism and increase public safety

The Justice Reinvestment Initiative is supported by funding from the **U.S. Department of Justice's Bureau of Justice Assistance (BJA)** and **The Pew Charitable Trusts**

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Policies to Reduce Recidivism by Strengthening Community Supervision

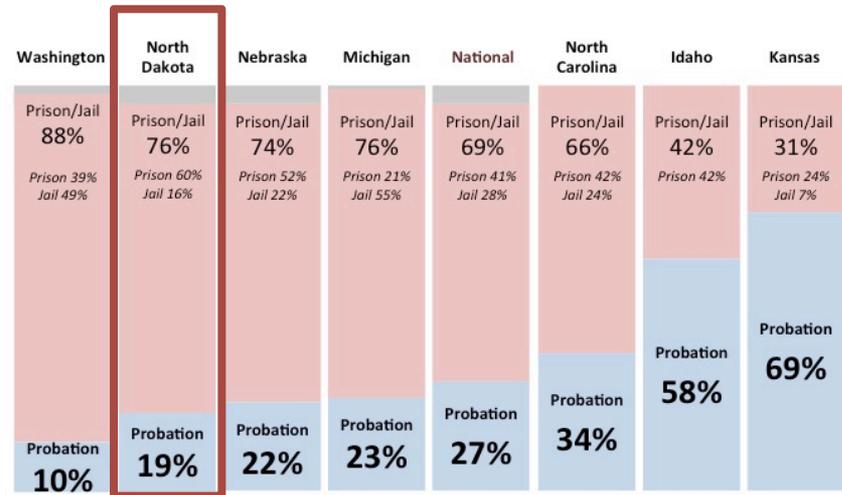
06

Nest Steps



North Dakota relies more heavily on incarceration for lower-level felonies than most states

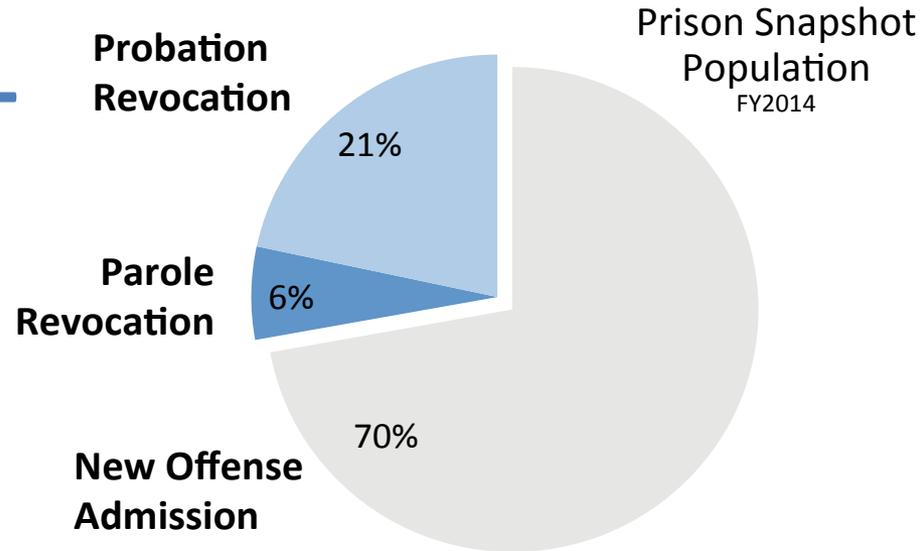
In FY2014, just **19 PERCENT** of felony sentences were to probation. In other states, this rate is higher: nationally, it is 27 percent; in Idaho, 58 percent, and in Kansas, 69 percent.



The majority of people sentenced for offenses under the lowest felony class (Class C) receive sentences to prison, where their average length of stay is 10 months, a costly sanction that provides limited options for programs that can lower recidivism. Sentencing people convicted of a Class C offense to probation, however, enables a sentence of up to 5 years that provides longer periods of accountability and monitoring. Probationers can receive treatment as needed, be sanctioned for failure to comply with conditions, and be revoked and sentenced to prison.

Individuals failing on community supervision put significant pressure on county and state facilities.

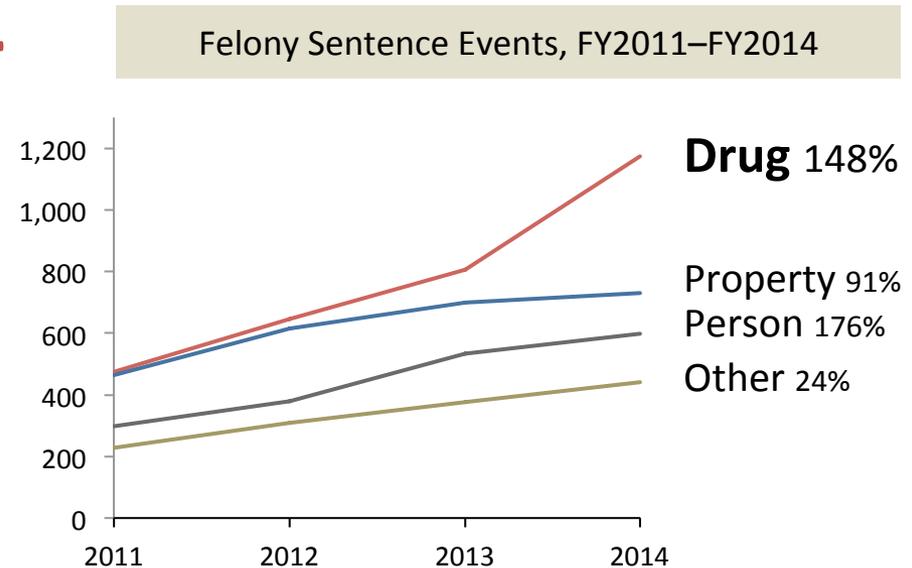
On any given day, **27 PERCENT** of North Dakota's prison beds are occupied by people who were on probation and parole supervision prior to being revoked and required to serve a term in prison.



Probation and parole revocations impose substantial costs for county governments as well: 33 percent of people revoked from probation are required to serve terms in jail. 45 percent of revocations from probation involved no new criminal offenses; the probationer violated the conditions of his or her supervision. In surveys, probation and parole officers indicated they are seeking additional tools—sanctions, incentives, and treatment where needed—to hold probationers and parolees accountable.

There is a substantial need for substance use treatment, and barriers exist to accessing adequate care

POs believe that **75 PERCENT** of people on probation or parole have a need for substance use treatment, and probation and parole officers indicate long wait periods to access behavioral health treatment.



A shortage of behavioral health treatment is a factor underpinning many of North Dakota's criminal justice challenges. This issue has been raised by numerous criminal justice system stakeholders, including local law enforcement, prosecutors, judges, and defense attorneys. Over a three-year period, from 2011 to 2014, the number of felony sentences for drug offenses increased two-and-a-half times. In 2014, four out of five felony drug sentences were for possession.

Maintaining the status quo will cost North Dakota a minimum of \$485 million in additional spending over the next decade

Ten-year cost of relying on contracted capacity to accommodate projected prison growth

Current contract beds (530) carried forward through 2025 **\$220M**

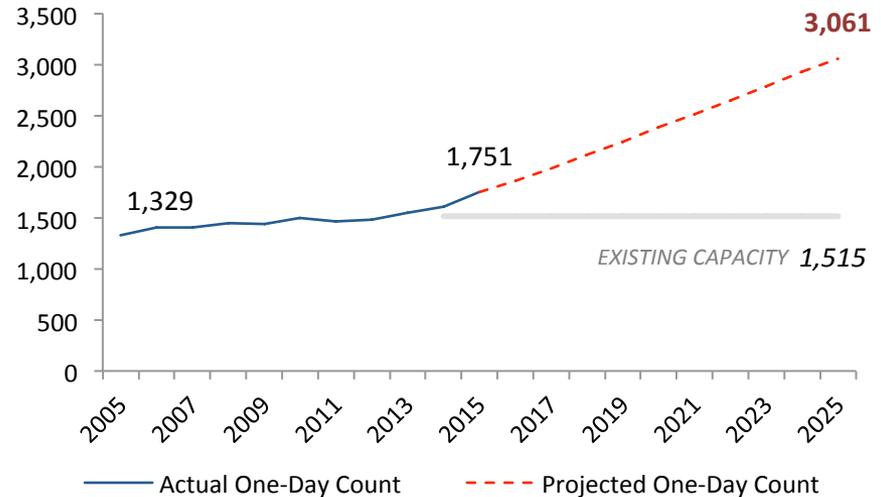
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Population growth (1,310) carried through 2025 **\$265M**

=

Total Estimated Cost of Accommodating Prison Growth Through Contract Beds **\$485M**
daily rate estimate is \$114/day

HISTORICAL AND PROJECTED ONE-DAY TOTAL INMATE COUNTS, FY2005–2025



Building a **NEW STATE PRISON** would add costs above the contract beds

OUT-OF-STATE CONTRACT BEDS likely would be needed, possibly increasing collateral costs

Contract beds within the state of North Dakota are **NOT ADEQUATELY EQUIPPED** to handle inmates' special needs

Stakeholder input informs the data analysis presented today



Incarceration Issues Committee

Individual meetings/calls with working group members and their staff



Corrections

Meetings with DOCR staff, Centre Inc., and the Dakota Women's Correctional Rehab Center; probation officers survey; and observation of probation reporting sessions



North Dakota Legislature

Meetings with Senators and House Representatives



Behavioral Health

DHS, Regional Human Services Centers, Ruth Meiers Hospitality Center, ADAPT Inc., Heartview Foundation, Heart River Alcohol and Drug Abuse Services, Native American Resource Center, and Choice Recovery Counseling



Courts

Meetings/calls with individual judges, state attorneys, and the Attorney General's Office; administration of a judicial survey; and court observations



Law Enforcement

Burleigh, Ward, and Cass County Police Department; Bismarck and Minot Police Department; Rolette, Bottineau, Pierce, Stark, and Williams County Sheriff's Office; Southwest Multi Correction Center; and presented at the joint Chiefs and Sheriffs Associations meeting



Community and Tribal Organizations

Turtle Mountain Tribal Council, NDACo, Indian Affairs Commission, Three Affiliated Tribes, CAWS North Dakota, North Dakota Council on Abused Women Services Coalition, and North Dakota Board of Addiction Counseling Services



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Justice reinvestment goals explored in today's presentations

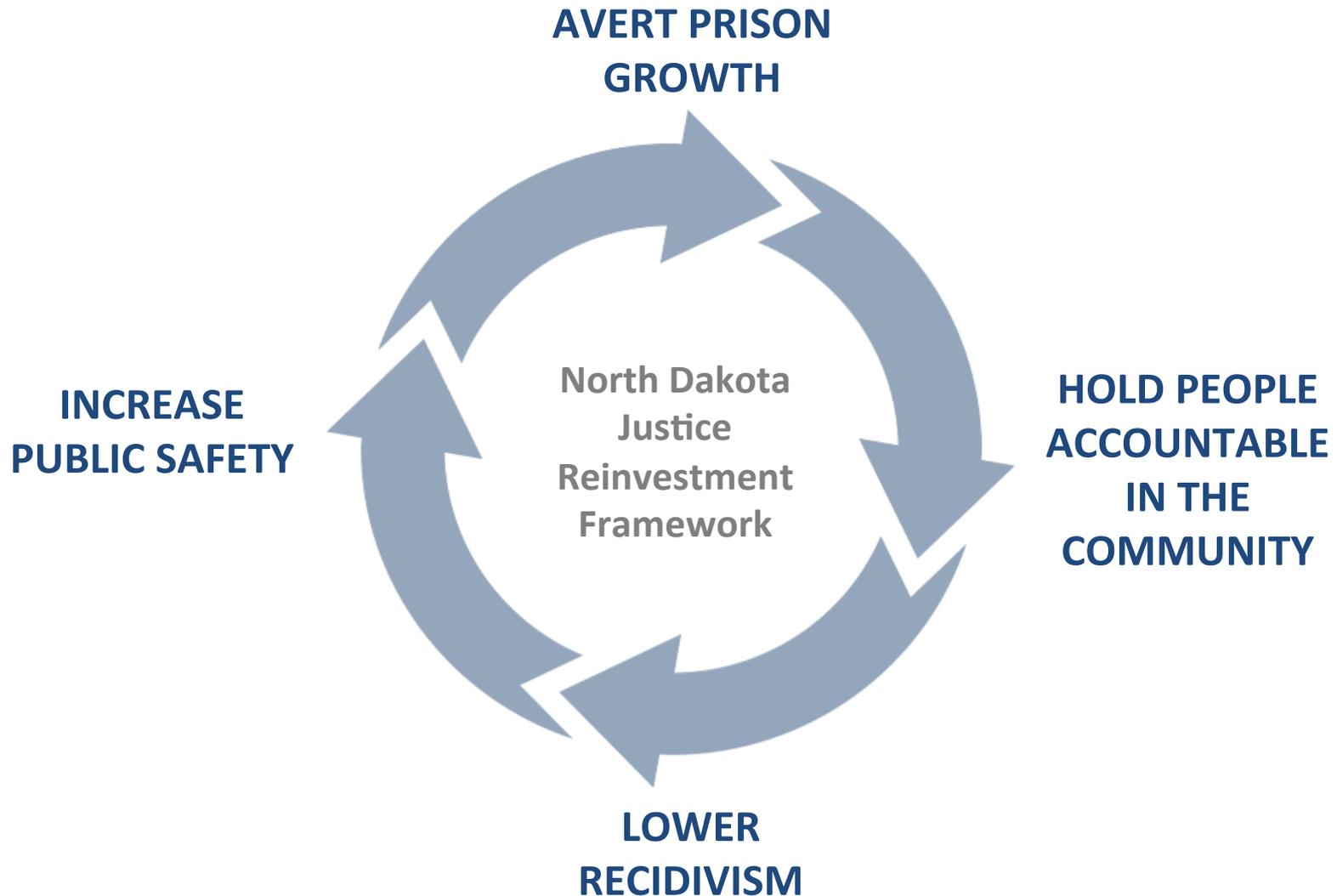
Avoid hundreds of millions in corrections spending

Improve services and resources for victims of crime

Reduce recidivism with stronger supervision

Expand access to high quality programs and treatment

The core tenants of justice reinvestment are interconnected and build upon one another to create an impact



Content of today's presentation

- Is the **first draft** of an eventual policy package. There will be several more iterations before the bill is finalized for submissions.
- The purpose of the presentation and today's bill draft is to spark discussion and to work toward **consensus on ideas to move forward**.
- Not all ideas discussed to date are included in today's content. **Additional material** will be brought forward at the September meeting.
- It is likely that not all ideas included in today's presentation or bill draft will be included in the final **bill filed in October**.
- The goal of today's presentation is to discuss the **ideas and intent** of the proposed policies. Individual meetings will be set to **review specific language** contained in the bill draft.
- Cost aversion and **impact estimates** will be provided at the next meeting.

Content of today's presentation

- You may notice discrepancies between the bill draft distributed today and ideas presented in these slides. Conversations with a number of stakeholders shaped these policy ideas, and some **changes were made** while the official bill draft was processing in the North Dakota system.
- Ideas presented in **these slides are more current** than language in the bill draft.
- We will be **speaking with each member** about of the Incarceration Issues Committee to discuss these details more in depth.

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More than 30 North Dakota victim advocates have participated in the justice reinvestment process

ORGANIZATIONS ENGAGED:

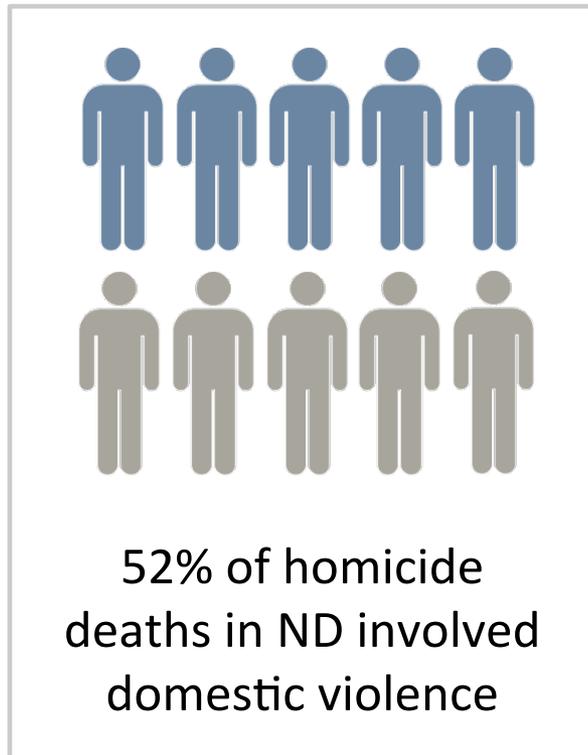
- Domestic Violence and Sexual Assault Program Directors and Advocates from Beulah, Washburn, Dickinson, Jamestown, Bismarck, Grand Forks, Minot and Bottineau, and Grafton
- Member of the Batterers Treatment Forum
- CAWS North Dakota
- FBI Victim Advocate
- First Nations Womens Alliance
- Crime Victim Compensation
- CJIS/SAVIN Staff

Key ways to support victims of crime

POLICY OPTION #1: Create stronger protections for survivors of domestic violence and help promote reform and recovery for batterers

Domestic violence presents a significant threat to public safety

Between 1992 and 2014, 136 people were murdered in North Dakota during incidents of domestic violence. The North Dakota Domestic Violence Fatality Review Commission reviewed these incidents and found several common factors:



- One or both parties had a **history of prior domestic violence incidents**; the majority of those incidents resulted in involvement with law enforcement and the criminal justice system.
- One or both parties had a **history of alcohol or substance abuse** sometimes in conjunction with a history of treatment for mental illness or a chronic health condition.

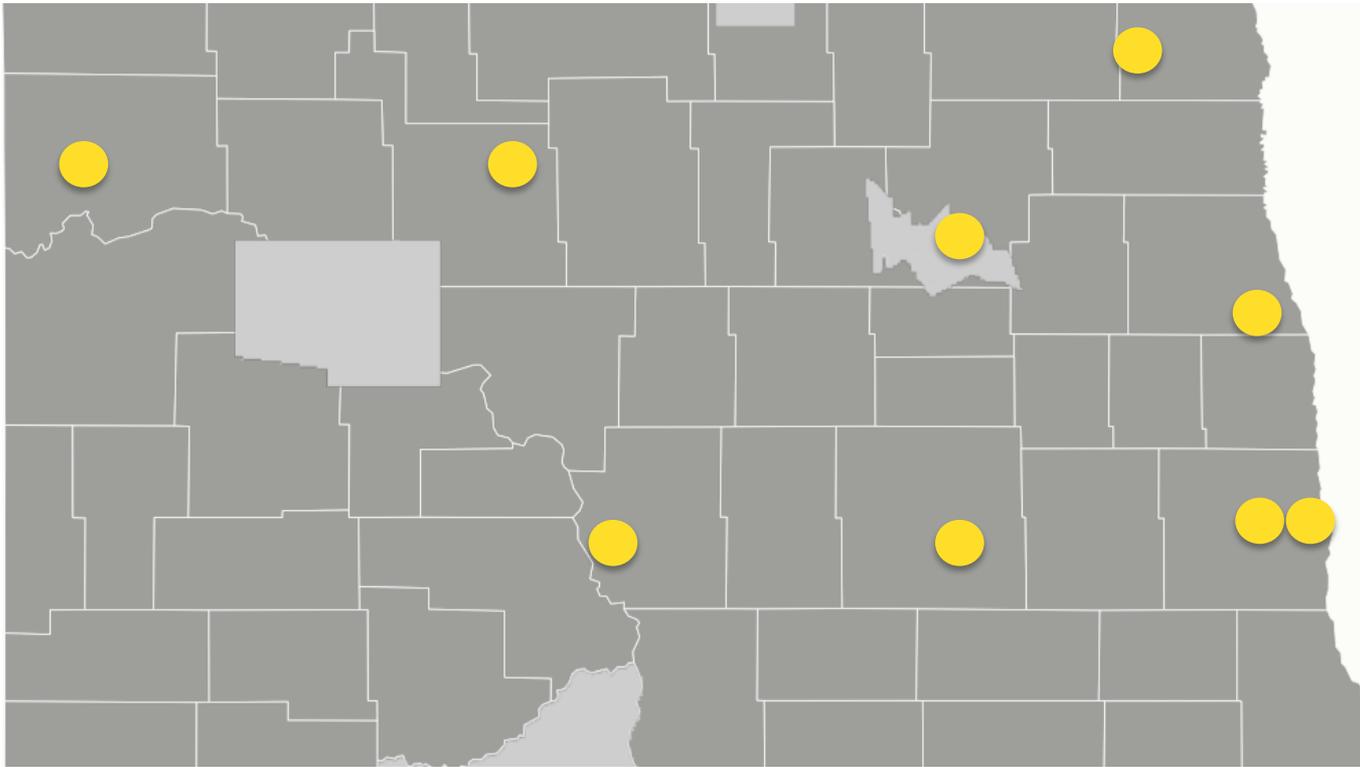
Ensure supervision for people committing crimes against persons

1A. Require that all defendants with pending charges related to domestic violence undergo a pretrial risk assessment, including a **lethality assessment**, to inform decisions to detain or release before trial. *This policy plank has not yet be incorporated into legislation or court rule.*

1B. Require that sentences for offenses defined as domestic violence include a **period of probation**, even for misdemeanor offenses. *This policy plank has not yet be incorporated into legislation or court rule.*

**POLICY
OPTION #1**

There are 9 Batterer's Treatment Programs across the state that work within the minimum guidelines for programming

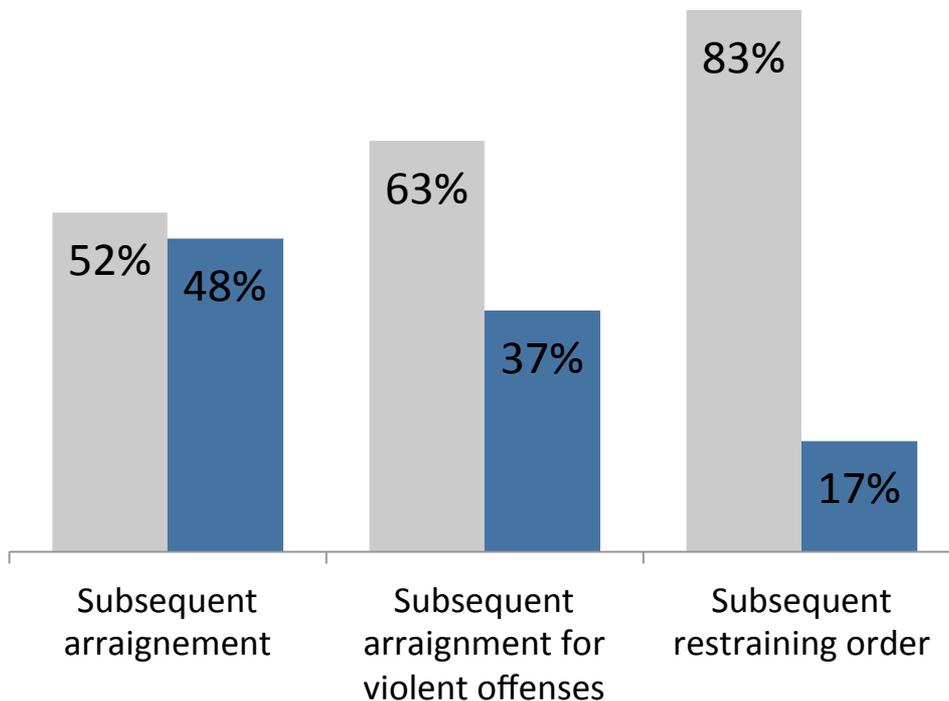


Not all programming submitted to the courts follows the Adult Batterers Treatment Standards of North Dakota; someone ordered to complete treatment may attend a 26 week course or they may complete a significantly shorter, online course.

There is no reassurance to courts that the programming received by a defendant is effective

OUTCOMES FOR DEFENDANTS WHO PARTICIPATED IN BIP VERSUS THOSE WHO DID NOT*

BIP PARTICIPANTS ■ OTHER DV DEFENDANTS ■



Both batterers treatment and anger management are currently included in sentences for domestic violence offenses.

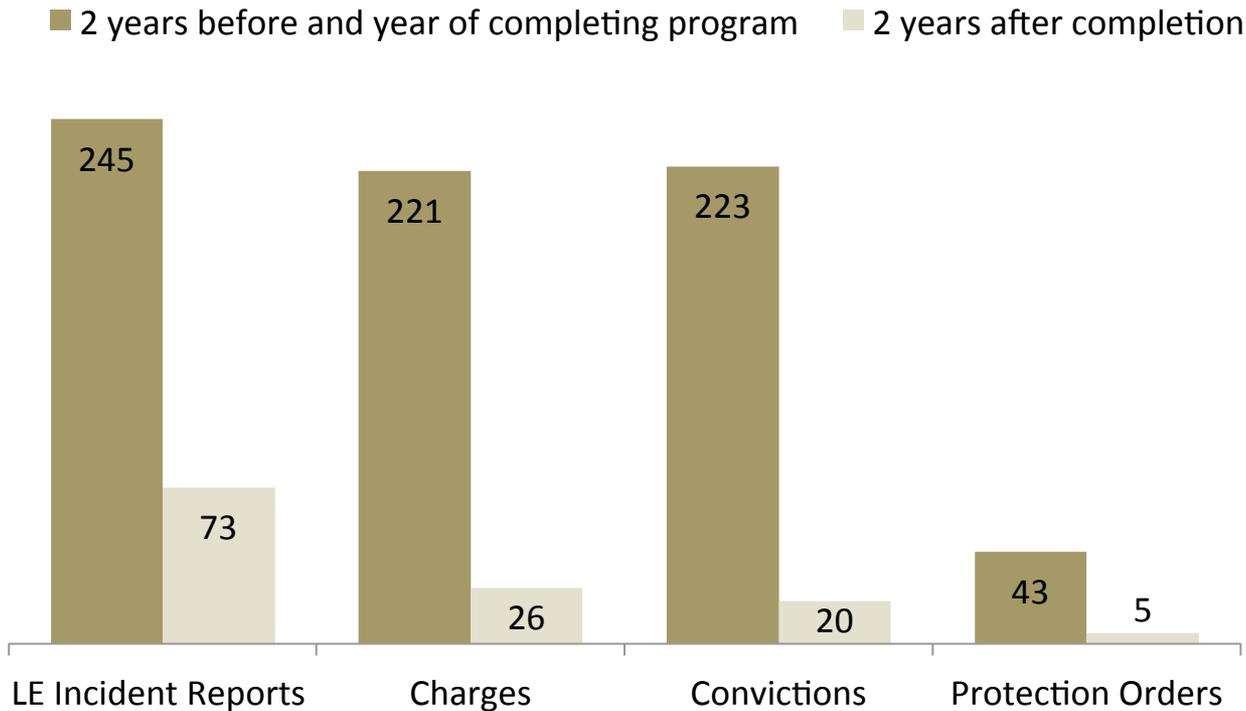
Batterer's intervention programs (BIP) have been shown to reduce harm at greater rates than anger management programs.

Bocko, S., C. Cicchetti, L. Lempicki, and A. Power. *Restraining Order Violators, Corrective Programming and Recidivism*. Boston, MA: Office of the Commission on Probation, November, 2004.

North Dakota Domestic Violence Fatality Report, 2014

Local jurisdictions saw 70 percent or more reduction in criminal justice system involvement after individuals completed BIP

LAW ENFORCEMENT AND COURT ACTIVITY FOR OFFENDERS WHO COMPLETED NEW CHOICES BETWEEN 2004 and 2013



Grand Forks tracked the outcomes of 294 participants in their Batterers Treatment Programming between 2004-2013

Establish state standards of treatment and oversight for batterers intervention programming

1C. The sentence for a domestic violence offense must include an order to **complete a batterers intervention program** as a condition of probation.

Location in draft policy: page 7, lines 1 – 6.

1D. A **batterers intervention standards oversight committee** shall be formed to establish minimum standards for BIPs, revise the standards as is deemed necessary, and make the standards available to the public. *Location in draft policy:*

page 7, lines 12 – 29 and page 8, lines 1 – 15.

1E. A batterer's intervention programs must be **certified by the state** in order to meet the conditions of probation. *Location in draft policy: page 7, lines 7 – 9.*

Key ways to support victims of crime

ADDITIONAL AREAS TO EXPLORE:

Opportunities to improve benefits available to victims of crime through the **crime victim compensation program**

Opportunities to improve consistency in **enforcing orders of protection** issued in Indian Country

Opportunities to implement **victim notification improvements** and systems changes to ensure all victims are enrolled in SAVIN



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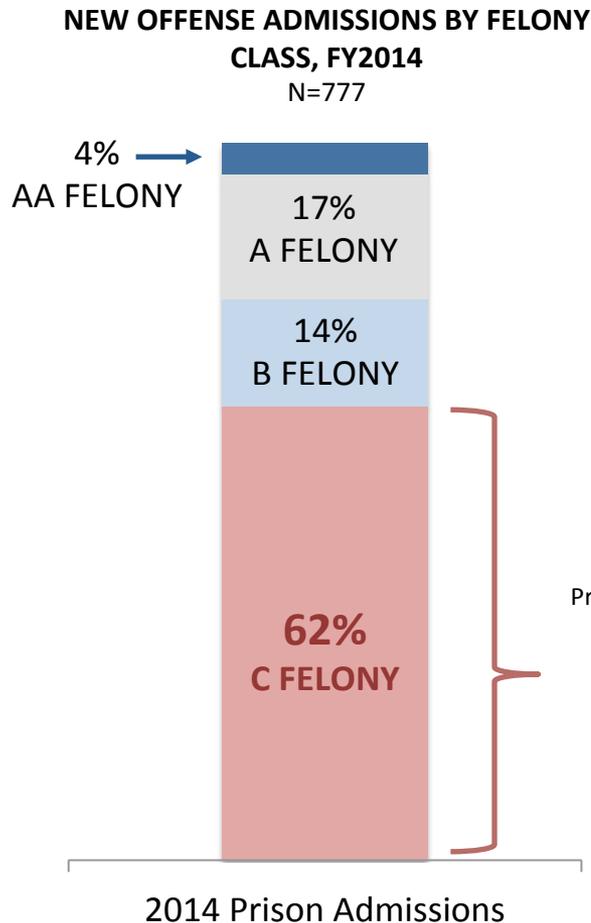
Key ways to avert growth in jail and prison populations and avert growing corrections costs

POLICY OPTION 2: Hold people with lower-level offenses accountable with probation and treatment

POLICY OPTION 3: Tailor responses to supervision violations based on risk and seriousness

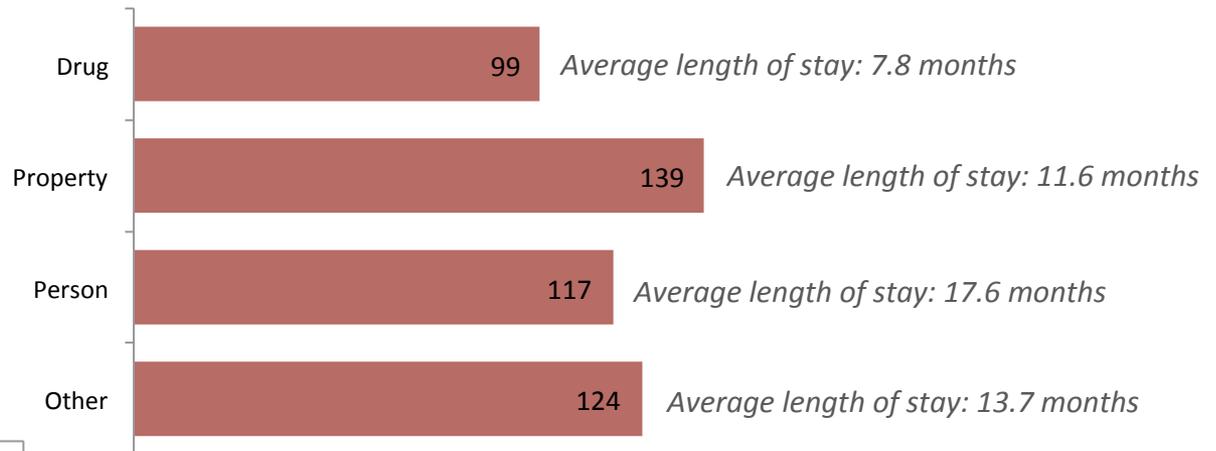
POLICY OPTION 4: Increase use of good time sentence reductions to limit time in incarceration

Felony class C's are a broad offense class that comprises nearly two thirds of all admissions to prison



North Dakota's sentence structure lacks distinction between offenses containing and not containing violence. As a result, negligent homicide and second offense of possession of drug paraphernalia fall within the same felony class.

The state could avert significant savings by diverting some of these offenses to **alternatives to incarceration.**



"Other" offenses include DUI, traffic offenses, obstruction, escape, and other offenses.
Misdemeanor A offenses made up 3% of FY2014 prison admissions.
Source: DOCR prison admission data files

Incarceration for lower level offenses creates significant costs for the state and counties without changing the behaviors that lead to recidivism

Sentencing options for people with lower-level drug offenses



JAIL OR PRISON



*8 months of incarceration
at \$113.59/day*

\$27,262
total cost

PROBATION



*2 years of supervision
at \$4.24/day*

\$3,095
total cost

Probation provides options to change behavior and lower risk

Tailor supervision intensity based on risk of recidivism and other public safety characteristics

Respond to violations with sanctions

Refer to programs addressing risks and needs

Revoke from probation and re-sentence to incarceration

Avert prison growth by holding people with lower-level offenses accountable with **probation and treatment**

2A. Separate the more than **350 class C felonies** into two classes of offenses. Retain some offenses as class C felonies and move certain offenses to class A misdemeanors. **Retain current penalties** for class C felonies. *Location in draft policy: page 9, lines 2 – 17.*

2B. Statutorily establish that the court will impose a **sentence of probation or a fully suspended incarceration sentence** for class A misdemeanors. *Location in draft policy: page 9, lines 18 – 24.*

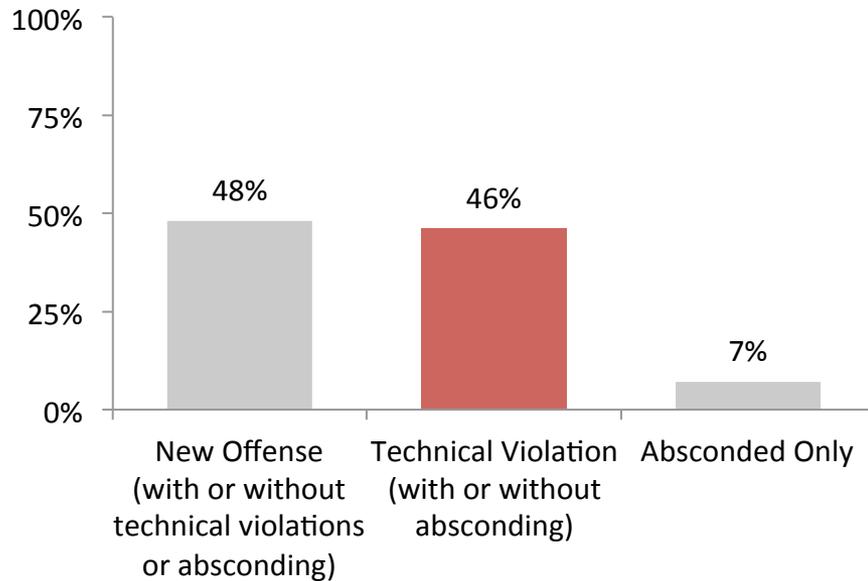
2C. Statutorily establish that the court will impose a **sentence of community service** for class B misdemeanors. *Location in draft policy: page 9, line 25 – Page 10, line 2.*

Avert prison growth by holding people with lower-level offenses accountable with **probation and treatment**

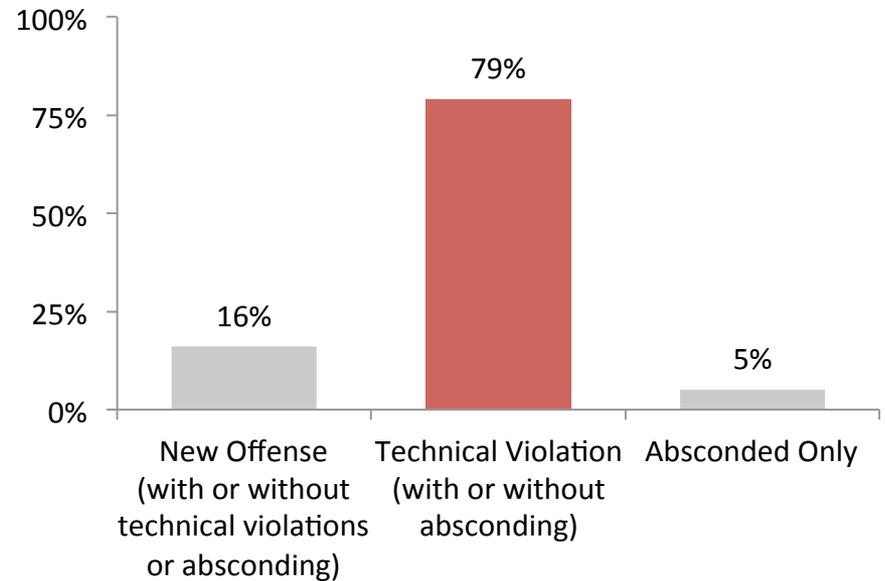
2D. Allow exceptions for sentences to incarceration if the person is concurrently or consecutively sentenced to imprisonment on a more serious charge or there are substantial and compelling reasons why the defendant cannot be effectively and safely supervised in the community. *Location in draft policy: page 9, lines 8 – 13, lines 22 – 24, .line 29 – lines 2 on page 10.*

Restructuring how violations escalate into revocations could divert over half of current revocations to alternative sanctions

Reducing revocations for technical violations by just **10%** could avert as much as **\$2.8 million** in state spending that can be reinvested in programs and treatment



PROBATION REVOCATIONS, 2014
N = 1,166



PAROLE REVOCATIONS, 2014
N = 295

Incarceration days are based on prison length of stay.

Source: DOCR supervision data

Avert growth in incarcerated populations by **tailoring responses** to supervision based on risk and seriousness

- 3A.** Classify violations of probation and parole into compliance violations, risk violations, and revocation violations. *Location in draft policy: page 4, lines 8 – 26, and page 13, lines 11 – 29.*
- 3B.** Restrict responses to compliance violations to **community sanctions** or short periods of incarceration. *Location in draft policy: page 4, lines 9 – 16, and page 13, lines 12 – 19.*
- 3C.** Allow community sanctions or longer periods of **confinement of up to 30 days** for risk violations. *Location in draft policy: page 4, lines 17 – 22, and page 13, lines 20 – 25.*
- 3D.** Allow for the initiation of **revocation proceedings** for revocation violations. *Location in draft policy: page 4, lines 22 – 26, and page 13, lines 26 – 29.*

Earned-time sentence reductions for pretrial and jail sentences would enable reinvestment into crime-reduction strategies

Three interventions that provide substantially different benefits per dollar spent

DETER CRIME

Increase law enforcement's ability to use hot spot strategies and deploy additional officers to increase the perceived certainty of apprehension.



REDUCE RECIDIVISM

High quality supervision (risk, need, responsivity), consistent sanctioning, and high quality treatment programs tailored to needs.



PROLONG INCAPACITATION

Increase length of stay to hold moderate- to high-risk offenders in prison for an additional 3 months, adding 250 to the prison population.



Benefit to Cost Ratio

 Benefits per dollar of cost.

Incentivize good behavior and reduce incarcerated populations by creating **good time sentence reductions** for individuals with sentences to jail.

4A. Performance criteria includes participation in court-ordered or staff-recommended **treatment** and **education programs** and **good work performance**. *Location in draft policy: page 2, lines 3 – 6.*

4B. While incarcerated in a correctional facility, an offender may earn no more than a one-day sentence reduction per six days served. An inmate sentenced to jail may receive good time sentence reductions for any sentence of which incarceration time is longer than 60 days. *Location in draft policy: page 2, lines 7 – 8 and 10-11.*

4C. An offender may receive **sentence reduction for time spent in custody** prior to sentence and commitment but is not eligible for sentence reduction or sentence reduction credit for time on pretrial probation or other community supervision. *Location in draft policy: page 2, lines 8 – 10.*



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Key ways to reduce recidivism and strengthen community supervision

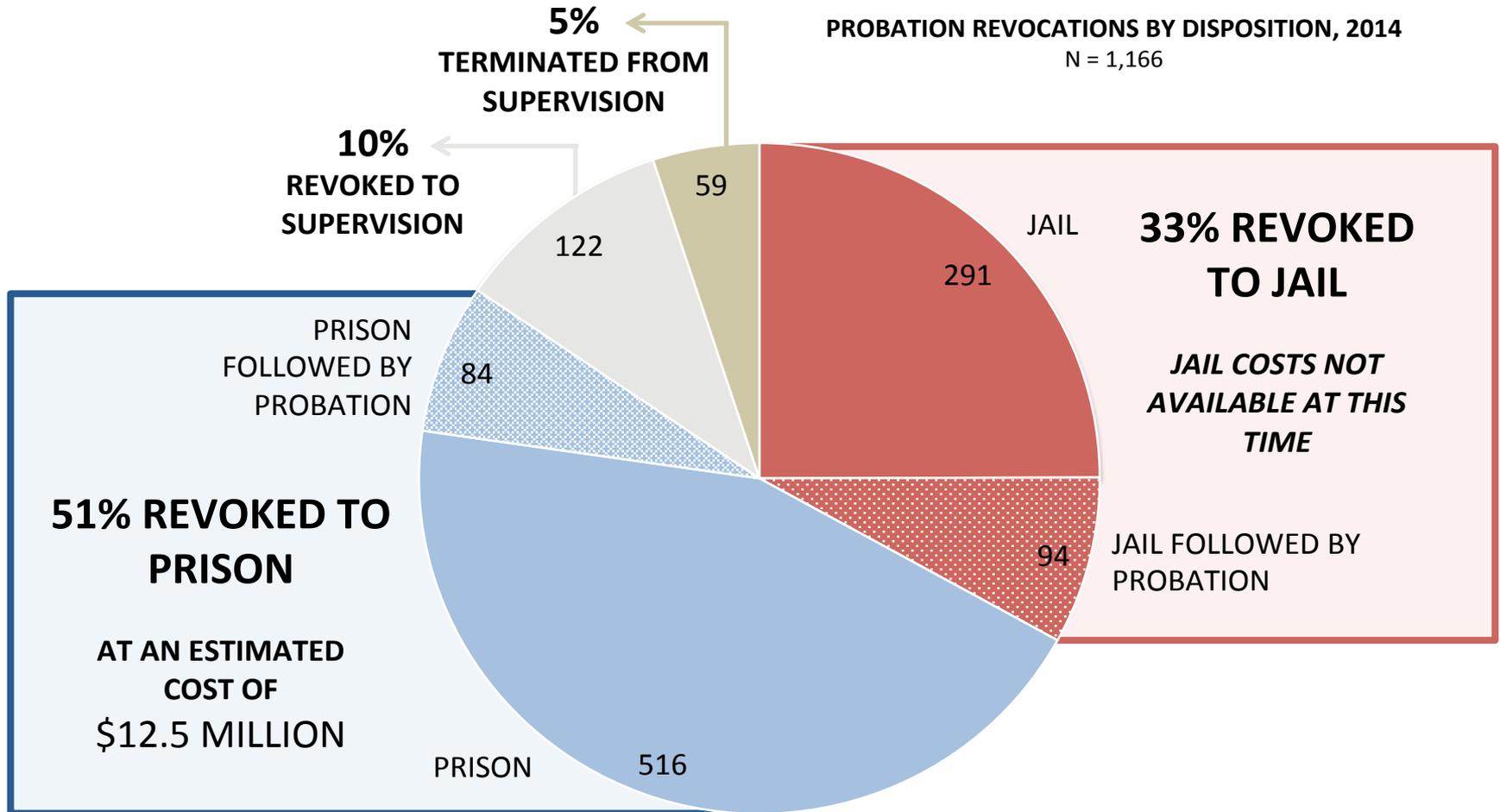
POLICY OPTION 5: Use swift, certain, and proportionate sanctions and incentives for individuals on probation or parole

POLICY OPTION 6: Frontload supervision resources during the period when risk of recidivism is the highest

POLICY OPTION 7: Focus supervision resources on those most likely to re-offend

POLICY OPTION 8: Ensure that people with violent offenses released from prison to the community are supervised

Improve swift and certain responses to supervision violations to increase accountability and avert substantial costs to the state and counties



Revocation rates are for FY2014 and include revocations for any reason.

Source: DOCR supervision data

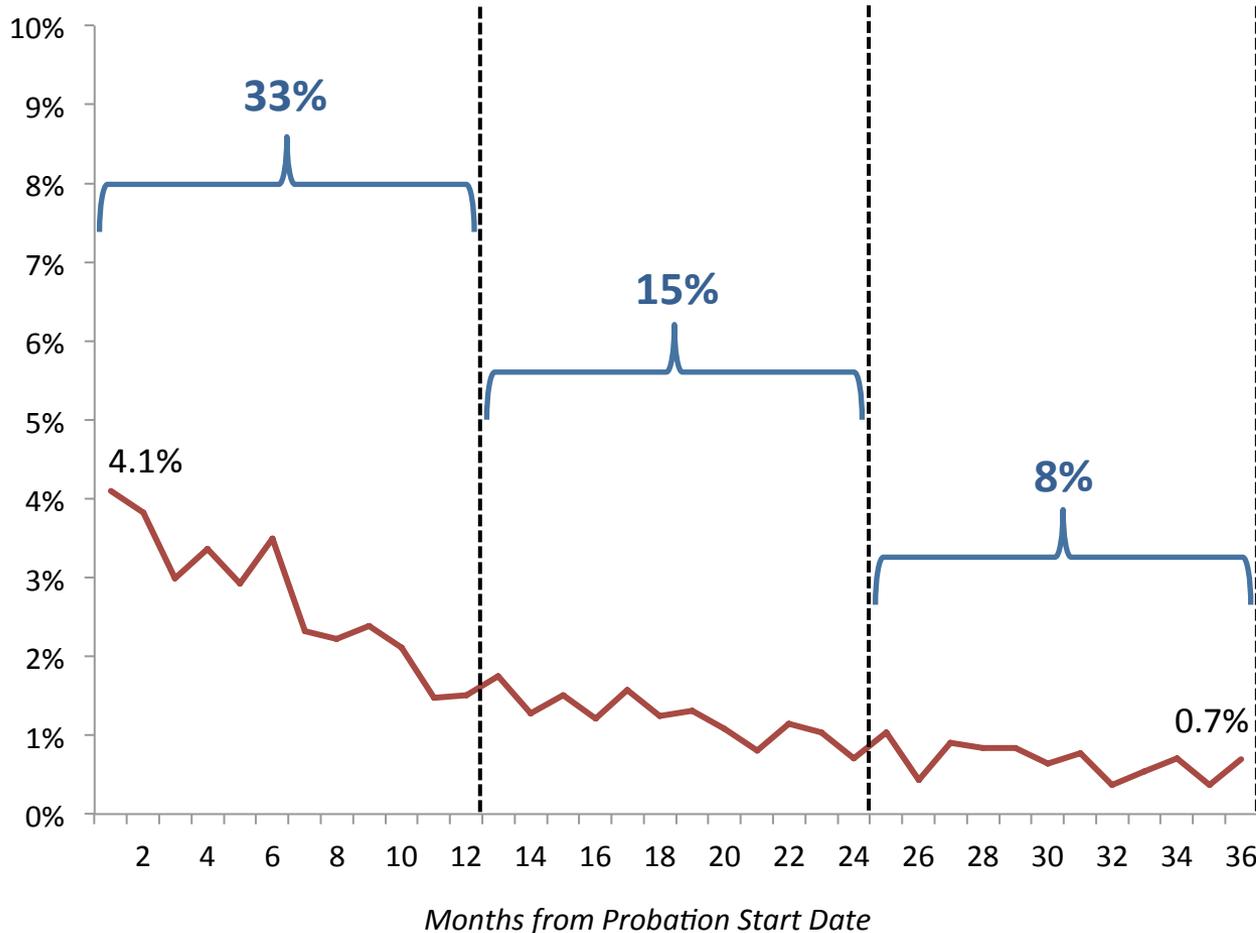
Reduce recidivism by improving use of **swift, certain, and proportionate sanctions** for probationer and parolees

5A. Require probation and parole to apply intermediate measures and incentives in accordance with a **formalized matrix of behaviors and corresponding responses**. The matrix must require officers to **respond swiftly, certainly, and proportionately** to the defendant based on the individual's risk and the severity of the violation and be used in pursuit of improved compliance. *Location in draft policy: page 5, lines 1 – 3, and page 14, lines 6-8.*

5B. When a petition for revocation is submitted to the court, it must **include documentation of violations and responses to violations** imposed by probation or parole officers. *Location in draft policy: page 14, lines 9 – 10.*

Most recidivism occurs in the first year of supervision, creating the need for frontloading resources

36-Month Rearrest Rates for Admissions to Probation in FY2012



Overall 3-year re-arrest rate is 56% (cumulative across the 36 months in graph at left).

Once “at risk” of being arrested (i.e. recidivating), 2-3% of the cohort are getting arrested each month early on, but that falls to about 1% per month by month 24.

Frontload supervision resources during the period risk of recidivism is the highest

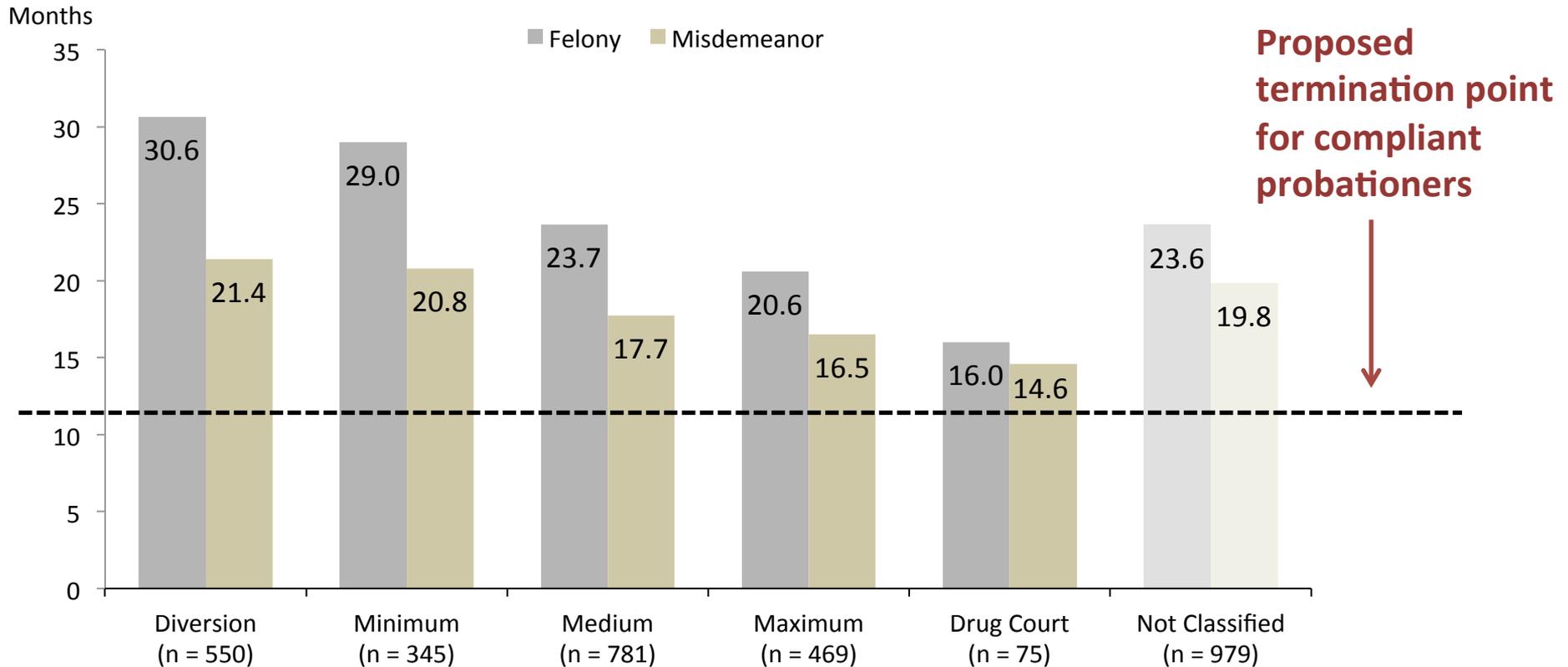
6A. Maintain current caps on **three year probation terms** for class AA, class A, class B and class C felony offenses and maintain the **360 day probation cap** for class B misdemeanors. *Location in draft policy: page 11, lines 8 – 11.*

6B. Reduce the cap for class A misdemeanors to one year. *Location in draft policy: page 9, lines 19 – 24.*

The average probation term exceeds two years, challenging efforts to focus resources when risk is the highest

FY2014 PROBATION TERMINATIONS - AVERAGE LENGTH OF STAY BY SUPERVISION LEVEL

N = 3,209



Less than one percent of probation cases were missing supervision level.
Source: DOCR supervision data

Reduce probation caseloads to focus on those most likely to re-offend by **automatically terminating supervision**

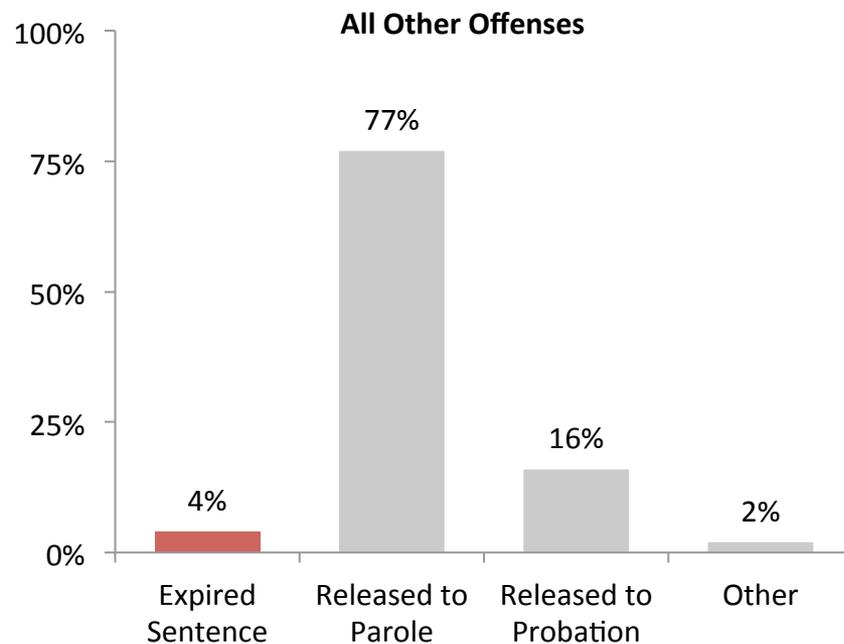
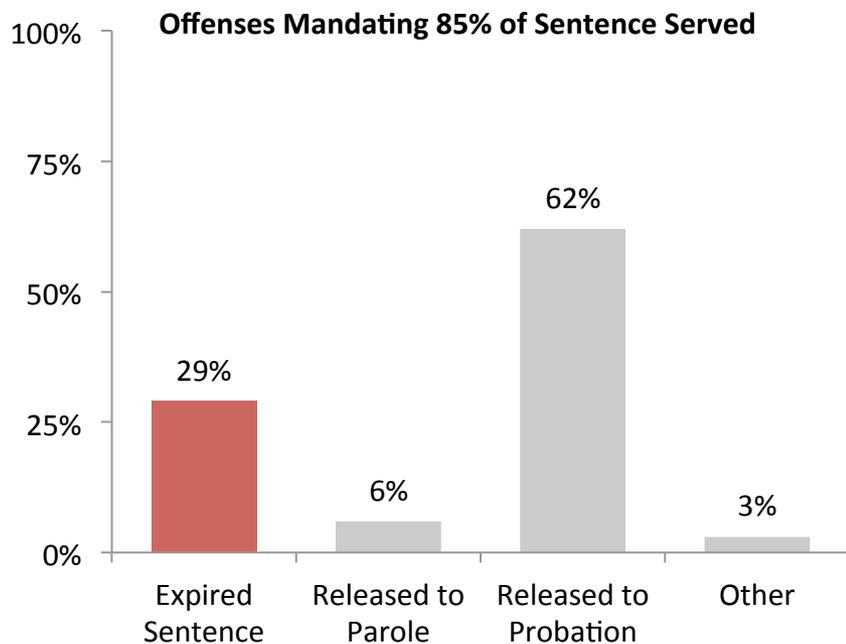
7A. A defendant is eligible for **presumptive termination and discharge** from probation after a period of 12 consecutive months on probation without a risk or revocation violation. **Exemptions** to automatic termination are made for violent offenders. *Location in draft policy: page 16, lines 26 – 31 and page 17, lines 1-2.*

7B. If a departure is made from the presumptive termination, the judge shall state on the record the **reason for denying discharge** from supervision. *Location in draft policy: page 17, lines 7 – 11.*

7C. A defendant with outstanding fines, fees, or restitution orders is **not eligible for early termination**, but may be placed on the lowest level of supervision for the remainder of the payment schedule. *Location in draft policy: page 17, lines 2 – 4.*

A much larger portion of 85 percent sentences are released without post release supervision than all other sentences

29% of inmates in prison for 85% offenses are released with no supervision, compared to only **4%** of inmates in prison for other offenses



Rates shown are for releases from prison during FY2014.

Source: DOCR prison release data files

**POLICY
OPTION #8**

Reduce recidivism and improve public safety by ensuring that violent offenders have **post-release supervision**

8A. Require violent offenders as defined in subsection 1 of 12.1-32-09.1 to have one year of **post release supervision**. *Location in draft policy: page 17, lines 29 – 30.*



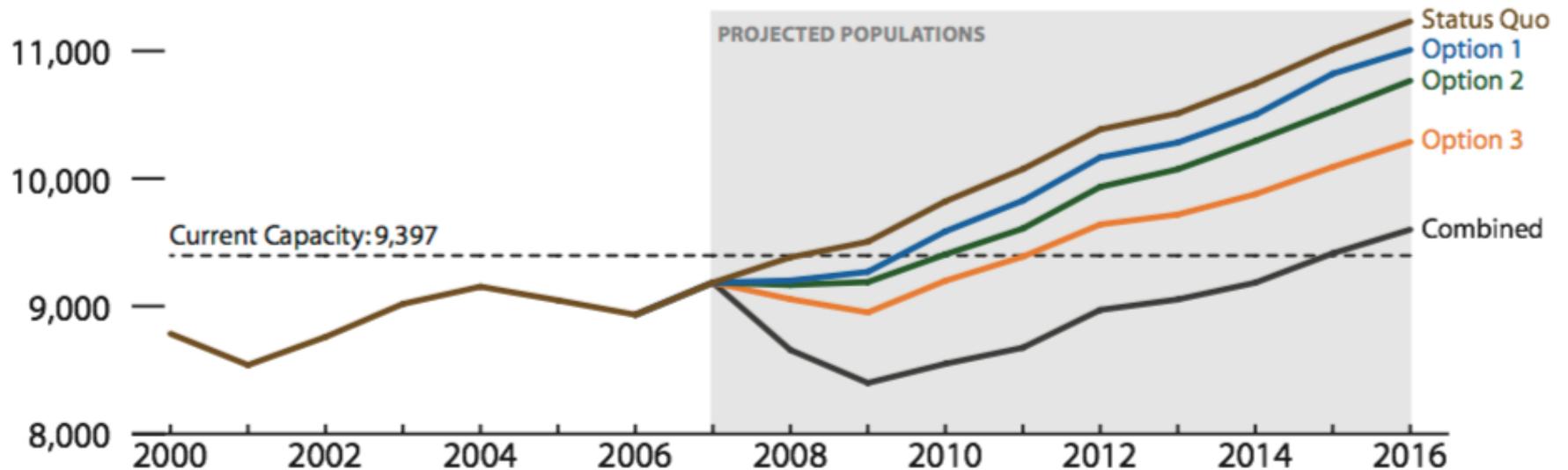
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Next steps

- CSG Justice Center staff will **compile comments** from today's discussion.
- Justice Center staff will meet with Incarceration Issues Committee members to **discuss bill draft language** and additional ideas.
- Bill language will be drafted around **known topics for inclusion**, such as pretrial processes, additional policies to support victims, improvements around data collection, and strengthening existing evidence based practices.
- A new bill draft will be **submitted in September** to reflect these conversations, corrections, and new ideas.
- **Cost aversion and impact projections** will be calculated based on the updated bill draft to be presented in September.

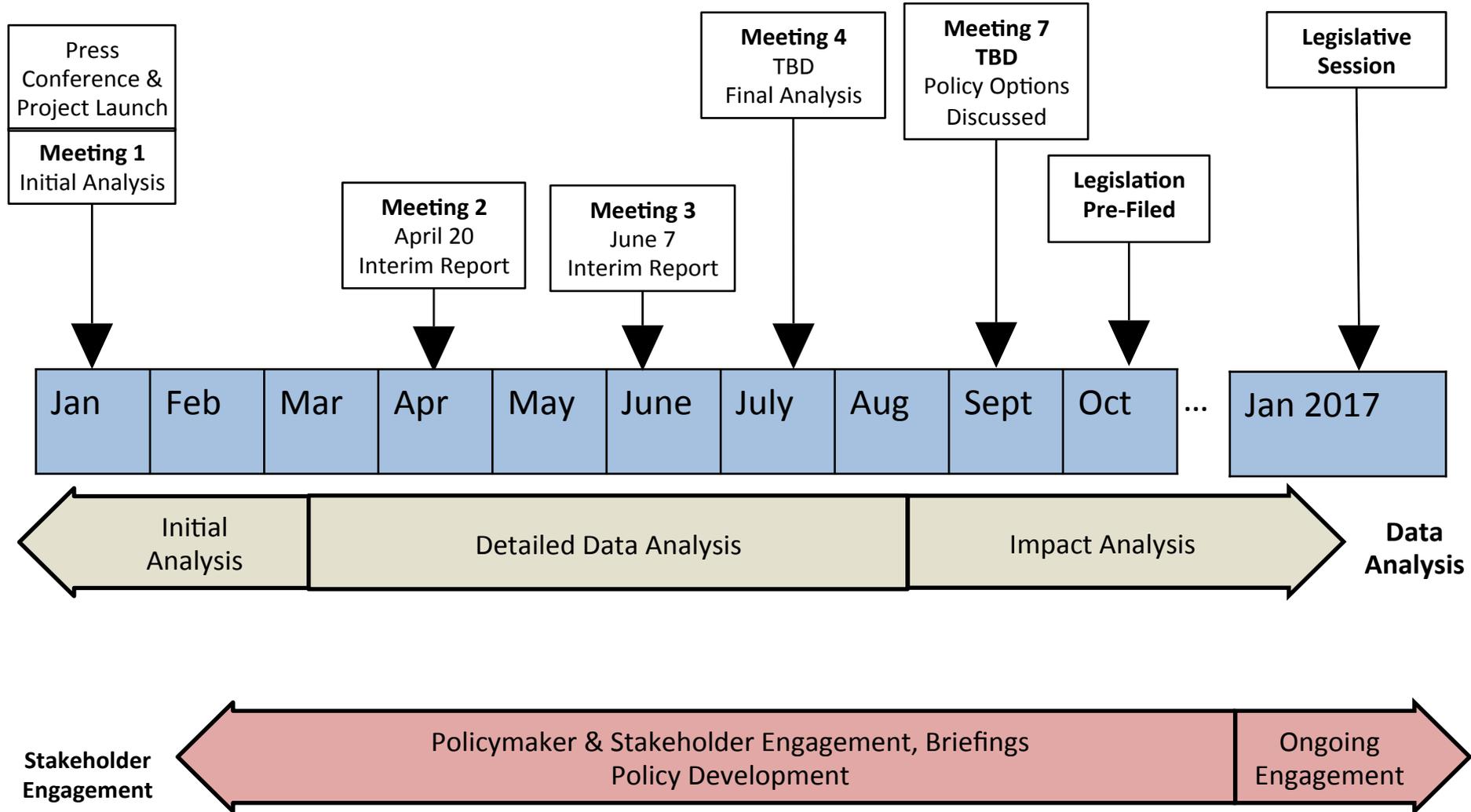
Sample of impact projection modeling from a previous justice reinvestment state



Sample of averted costs and reinvestment from previous justice reinvestment state

		FY2016	FY2017	FY2018	FY2019	FY2020	Total
Averted Costs	Operational Costs Averted	\$4.0M	\$9.1M	\$10.4M	\$10.6M	\$10.6M	\$44.8M
	New Construction Costs Averted	2014 Master Plan Report recommended construction of 1,100 beds by FY2019 at a cost of \$261.6M					\$261.6M
	Total Averted Costs	\$4.0M	\$9.1M	\$10.4M	\$10.6M	\$10.6M	\$306.4M
Reinvestments	Increase the number of probation officers	\$0.1M	\$0.9M	\$2.0M	\$2.5M	\$2.5M	\$8.0M
	Community-based programs and treatment to reduce recidivism	\$2.0M	\$5.0M	\$5.0M	\$5.0M	\$5.0M	\$22.0M
	Improve parole supervision	\$0.3M	\$0.3M	\$0.3M	\$0.3M	\$0.3M	\$1.5M
	Sustainability policies	\$0.5M	\$0.2M	\$0.2M	\$0.2M	\$0.2M	\$1.3M
	Total Reinvestment	\$2.9M	\$6.4M	\$7.5M	\$8.0M	\$8.0M	\$32.8M
	Net Savings	\$1.1M	\$2.7M	\$2.9M	\$2.6M	\$2.6M	\$273.6M

North Dakota Justice Reinvestment Timeline



Thank You

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